

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

June 15, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 93-2684-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ALFRED SHARPE,

Defendant-Appellant.

APPEAL from an order of the circuit court for Dane County:
GERALD C. NICHOL, Judge. *Affirmed.*

Before Eich, C.J., Dykman and Sundby, JJ.

PER CURIAM. Alfred Sharpe appeals from an order denying his motion for sentence credit. The issue is whether equal protection compels sentence credit for days Sharpe served under restrictive bail conditions. Because Sharpe was not in custody while on bail, he is not entitled to sentence credit. Therefore, we affirm.

Sharpe was on bail subject to highly restrictive conditions, including daily reporting requirements, travel restrictions and frequent drug testing. Because the trial court summarily denied his motion for sentence credit, we reversed and remanded for an evidentiary hearing. Following an evidentiary hearing, the trial court again denied Sharpe's motion for sentence credit. Sharpe appeals.

Section 973.155(1)(a), STATS., provides that:

A convicted offender *shall be given credit* toward the service of his or her sentence *for all days spent in custody in connection with the course of conduct for which sentence was imposed.* As used in this subsection, "actual days spent in custody" includes, without limitation by enumeration, *confinement* related to an offense for which the offender is ultimately sentenced, or for any other sentence arising out of the same course of conduct

(Emphasis added.)

Sharpe contends that equal protection entitles him to sentence credit because his bail conditions restrict his liberty to a similar, if not greater, extent than similarly situated individuals serving sentences in the community residential confinement or intensive sanctions programs. Testimony was presented comparing the extent of Sharpe's restrictions with those of individuals serving other sentences. The trial court concluded that Sharpe's bail conditions were not as restrictive as being in custody. We agree.

A convicted offender receives sentence credit for "days spent in custody." Section 973.155(1)(a), STATS. We have defined "in custody" as "locked in at night' or otherwise confined." *State v. Pettis*, 149 Wis.2d 207, 211-12, 441 N.W.2d 247, 249-50 (Ct. App. 1989) (quoting *State v. Cobb*, 135 Wis.2d 181, 184, 400 N.W.2d 9, 11 (Ct. App. 1986)). We analyze custody by determining whether the offender's noncompliance with the restrictions imposed could result in prosecution for escape under § 946.42, STATS. Because Sharpe was not "in custody" according to *Pettis* and *Cobb*, he is not entitled to sentence credit

under § 973.155(1)(a) while on bail, notwithstanding the highly restrictive conditions.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.